



September 30, 2011

Mr. Phil Isenberg
Chairman
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Submitted via email: deltaplancomment@deltacouncil.ca.gov

Re: Delta Plan, Third Staff Draft

Dear Mr. Isenberg:

The 5-County Farm Bureau Delta Caucus appreciates the opportunity to comment on the Delta Plan, Fifth Staff Draft. As the lead agricultural organizations that represent many of the Delta Farmers and Ranchers in the Primary and Secondary zones of the Delta, we continue to follow this and other efforts that have been generated as a result of the 2009 Legislative directives. We would like to thank the Council for holding multiple issue workshops as they pertained to the various chapters of the Delta Plan. We found them informative, and useful to hear thoughts from the Council members as well as from other interested parties. We are hopeful you will consider holding additional focused workshops as the Delta Plan evolves.

As with our comments on previous draft plans, members of the Delta Caucus rely heavily on the requirement that the Delta Plan provides a ***“more reliable water supply for California and restoring and enhancing the Delta ecosystem and does this in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place (Water Code Section #85054).”*** In order to protect and enhance the important agricultural values of the Delta as an evolving place, the Delta Plan must clearly provide for the following:

- Land,
- Suitable quality water for irrigation,
- Flood control and drainage,
- Protection from Endangered Species due to newly created habitat, and
- Flexibility to change as conditions and markets readily change.

This is not meant to be an exhaustive list, but represent key issue areas that must be addressed for agriculture to be protected and enhanced. The text of the Delta Plan and its policies to advance the co-equal goals should be developed and implemented in a manner that protects, enhances and recognizes the values of Delta agriculture, while also allowing for

agriculture to effectively adapt to changes over time – and thus avoids evolving agriculture out of the Delta.

Comments on the Fifth Staff Draft

We acknowledge that changes have been made to the several drafts of the Delta Plan and offer the following comments regarding the Fifth Staff Draft:

1. **Page 4, Lines 18-19:** Under the Delta Plan’s Foundational description it states *“the Plan seeks to immediately halt practices known to be detrimental to the sustainability of the Delta’s many functions and services.”* This language is concerning because of its vague nature and implications. We would urge the Council to modify this language. To halt all perceived detrimental actions could be catastrophic in many applications.
2. **Page 6, Lines 17-18:** refers to operating “our water in a way that mimics a more natural hydrograph.” This should be a science based goal and has yet to be defined. We would caution the inclusion of this if there are no metrics to accompany this.
3. **Page 17, Lines 26-33:** imply that ALL levee breaks will result in saltwater inundation in the Delta. This paragraph should be refined to characterize this scenario as a low flow event. In a high outflow break, this would have hydraulic pressure pushing the water to the bay rather than reversing the flow in many cases.
4. **Page 24, Line 1:** This line identifies that a portion of flows diverted are returned to the rivers. This should be quantified. It has long been argued that the same water molecule is reused multiple times before and when it enters the Delta.
5. **Chapter 2 Science and Adaptive Management:** The Council should provide for specific policies that address what is a reasonable amount of time to conduct and adaptively manage changes in science, and public review.
6. **Chapter 3, Page 54, Lines 8-9:** The language regarding agricultural practices as covered actions could prove to be a management nightmare if these are not identified clearly. This stands to impede agricultural practices and improvements and should therefore be removed from covered action status.
7. **Chapter 3, Page 54, Lines 15-19:** This whole paragraph promotes a wide array of consequences that are unknown currently, and could continue to move the target and restrict the freedoms of private property owners to implement land improvements like vineyard develop. This wide sweeping stick approach puts landowners in a certain limbo for an uncertain amount of time until studies are completed. This far surpasses any reasonableness measure. This constitutes a passive taking of land and should be removed from the Delta Plan.
8. **Chapter 3, Page 56, Lines 24-27:** This second bullet point draws into the Delta Plan other regions of which Delta water is exported. Does this mean that as a condition of sustainably managing the Delta, population growth will be evaluated as a measure as this may impact the Council’s ability to achieve the co-equal goals?
9. **Chapter 3, Page 56, Lines 31-35:** Is in direct conflict with comment number seven above.
10. **Chapter 3, Page 60, Lines 2-12:** We raise the question of whether it is appropriate for the Council to evaluate any appeals to the certification of consistency, or if a different

body should be availed. Additionally, if this is an agricultural management issue, 30 days to file a review may be acceptable, but there is no mention in the amount of time the Council is required to review this certification initially, or on appeal. We would ask the Council to clarify their intent through a policy recommendation that is both timely and reasonable.

11. **Chapter 3, Page 62, Lines 3-6:** An agency's ability to propose projects for the Delta Plan should only be accepted if an Environmental Review of the project has been completed and vetted fully through a public process. We would ask for this to be added to this section in addition to completing the certification of consistency.
12. **Chapter 4, Page 77, Lines 12-22:** Water Code Statute 85057.5 (b) excludes the management of the CVP and SWP from the covered action requirements (Page 58, line 17). It states "routine maintenance and operation" are exempt. Routine operations have been lower than contracted amounts consistently in the past. Page 77 codifies this statement. We would ask that any changes to 'routine maintenance and operation' trigger a covered action requiring review by the Council to ensure the action meets the certification of consistency with the co-equal goals, and protection and enhancement of the Delta as a place.
13. **Chapter 4, WR P1:** To point 12 of these comments it appears there is conflicting views on exports as covered actions or not. This needs to be clarified. Additionally, we would raise concern with the use and wording of transferring water through the Delta as a negative impact. It is highly beneficial to South Delta water users both agricultural and municipal to have water flow through the Delta in this manner. It has improved water quality and we would maintain that this is a beneficial and essential function.
14. **Chapter 4, Page 83:** We would support having a plan for catastrophic events, and also improving regional self reliance.
15. **Chapter 4, Page 87, ER R8:** We would urge the Council to evaluate the alternatives to the BDCP process should they not complete their task at December 31, 2014.
16. **Chapter 4, Page 93, Line 21:** We would again urge the Council to review and propose their recommendations for Groundwater as a component in achieving the regional self sufficiency goals and allow the public to review this in the context of the Draft Environmental Impact Report and the next Delta Plan Draft.
17. **Chapter 5, Page 117, Lines 21-25 ER P2, P3:** We have considerable concern with habitat restoration locations being prioritized by elevation alone. This does not take into account whether or not these locations are compatible with Habitat restoration goals, and furthermore would place undue burden on landowners under the covered actions provisions. The burden of proof that ER P3 places on proving an action has been mitigated for an 'opportunity for habitat restoration' area is unidentifiable and impossible to answer.
18. **Chapter 5, Page 125, Lines 17, ER R8:** Refer to comment number 15.
19. **Chapter 6, Page 138-139, Lines 35-19:** The very nature that the future flows of the South Delta would be allowed to further degrade the quality of water for agricultural uses and municipalities to achieve the co-equal goals is counter to the other objectives of protecting and enhancing the cultural and agricultural values of the Delta. Furthermore, the State Water Resources Control Board (SWRCB) would be unable to

provide a updated plan that would be satisfactory if the Bay Delta Conservation Plan is not slated to be complete until December 31, 2014. The level of guidance and cohesion between the efforts of the SWRCB would seemingly be futile. We would refer the Council back to recommendation number 15 of our comments.

20. **Chapter 7, Page 165, Lines 14-15, RR P2:** The nature of this reference to figure 5-3 on page 120 implies the entire area shall not be encroached upon while the remainder of RR P2 is very specific in nature. This needs to be clarified as to the intent of the policy and its coverage. We would recommend that figure 5-3 be modified to a shaded figure that shows each individual boundary of the recommendations for RR P2.
21. **Chapter 8:** We look forward to commenting in the future on policies derived from the Council's interpretation of the DPC's ESP. We would remind the Council that as a component of the California Environmental Quality Act, agriculture loss must be evaluated for and mitigated for.
22. **Chapter 9, FP R2:** We believe there are sufficient assessment districts in place for flood control through the current structure of the Reclamation Districts. To create another layer over these existing entities is repetitive and adds more tax burden to landowners in the Delta. We would recommend deleting this policy.
23. **Chapter 9, FP R3:** This recommendation fails to assert whether the policy of the Council will be to use a willing seller scenario only. We believe the purchase of easements for the South Delta Flood Plain would be the preferred method of action by the Council; however we believe this recommendation should not be put into effect if there is no clearly defined flood plan and or study to support this use.
24. **Chapter 9, FP R6:** This recommendation fails to address when and how a user could appeal out of a "stressor" fee. Would the entity then transition to a "beneficial user" fee then? Or is it assumed that everyone is a beneficiary, and only some are "stressors"? There is much work to be done on this recommendation. Furthermore, in no way would we be in support of the Council, Delta Conservancy, and or the Delta Protection Commission being "pre-funded". The current California Legislature stripped general fund dollars from the SWRCB and left program participants of the Irrigated Lands Programs, and other associated permitted programs to back fill in the form of fees due to the State's inability to cover these costs for seemingly priority areas. This policy further solidifies a process for going after fees in order to repay debts owed to the loan. This recommendation should be deleted.
25. **Chapter 9, FP R8:** Again, the need for the BDCP habitat work to be completed would seem necessary before any shovels are turned on eco-system habitat projects that are considered as part of the Delta Plan.
26. **Chapter 9 FP R9:** This is not an area that the Conservancy should be weighed down with. The Conservancy should rely on information that is already available, and focus on the other charges for economic development and habitat work. The Conservancy should rely on nonprofits and the private sector for this work to occur.

Other Areas of Comment

Economic Sustainability Plan (ESP)

The Delta Caucus would also like to take the opportunity to comment on the Delta Protection Commission's (DPC) Economic Sustainability Plan (ESP) that has been discussed at your recent September 23 Delta Stewardship Council Meeting. We are very supportive of the efforts and management that has occurred given the incredibly ambitious timelines that have been set for the integration of this plan. The theme of this document is that the Delta Economy and surrounding areas are driven by Agriculture. The value Delta Agriculture provides for jobs and value added processing, undoubtedly contributes to the State of California, and cannot be repurposed or recaptured by tourism and or recreation effectively to offset the forecasted losses from Delta Agriculture.

Furthermore, this document represents the fabric and very nature of the local people. The Delta as a place can be sustainable, but needs tools to assist the locals in enhancing those values including agriculture. But to that nature, the document also provides a deep seeded reality that the Council cannot ignore, and will be challenged to integrate into the co-equal goals of the Delta Plan in a way that will be agreeable to locals, as well as the Legislative requirements. We ask that this issue be addressed sooner than later in conjunction with locals so that the Delta does not await its fate every five years.

Additionally, we heard very clearly from Council members that the Council could take pieces of the ESP that it found to be compatible to the Delta Plan and directives of the Council. We would strongly caution the Council in taking this approach. This undermines the locals who serve to direct this ongoing process, and essentially silos the applied science and keeps from treating the Delta as an integrated, functioning piece of the economy and landscape. We are interdependent on actions in and out of the Delta, and the economics validate that.

Conflicting Meetings

As many of the Council members are aware, many processes are being reviewed in the Delta. The Delta Caucus exists in part due to the overwhelming need to track these processes. That being said, to whatever extent possible, we would ask the Council and supporting processes of the Delta Plan work to provide as much access as possible through telecommuting options, and webcasts. This has been greatly improved over the duration of these meetings. Additionally, we have noticed many of these meetings are beginning to overlap each other. One such example was this month the Bay Delta Conservation Plan's (BDCP) South Delta Habitat Working Group and the Council's Workshop on Performance Measures, and Governance and Covered Actions. While we know there are limited days available, we would ask the Council to avoid this to the greatest extent possible. With ambitious deadlines looming into the end of the year, we recognize that this may invariably occur.

Conclusions

The Delta Caucus understands the need for the coequal goals but remains concerned that the Delta Plan is still inadequate in answering a number of issues of importance for local agriculture's protection and enhancement. Some of these continue to include:

- The protection and enhancement of Delta agriculture is not adequately addressed nor are policies analyzed to determine if they will adversely and negatively impact Delta agriculture.
- The cost and timing of determining covered action consistency will negatively impact Delta agriculture's ability to successfully adapt to changing conditions.
- The cost to develop and implement the plan will partially be borne by Delta agriculture and the costs will not be offset by the Plans' benefits.

Thank you for your consideration of our concerns shared by our five counties. We look forward to seeing these addressed in part or in whole in your next document. Should you have any questions, please direct them to Katie Patterson (209) 931-4931 of the San Joaquin Farm Bureau Federation.

Sincerely,



Russell E. van Löben Sels

Chairman

Cc:

Contra Costa County Farm Bureau
 Sacramento County Farm Bureau
 San Joaquin Farm Bureau Federation
 Solano County Farm Bureau
 Yolo County Farm Bureau

North Delta Water Agency
 Central Delta Water Agency
 South Delta Water Agency

California Farm Bureau Federation